

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL

PART

09M

Justice

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LAW ENFORCEMENT EMPLOYEES BENEVOLENT
ASSOCIATION, SEAN MILAN, JOEL PURSER,

Plaintiff,

INDEX NO. 153154/2023MOTION DATE 04/26/2023MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT
OF SANITATION, NEW YORK CITY CIVIL SERVICE
COMMISSION, NEW YORK CITY DEPARTMENT OF
CITYWIDE ADMINISTRATIVE SERVICES

DECISION + ORDER ON MOTION

Defendant.

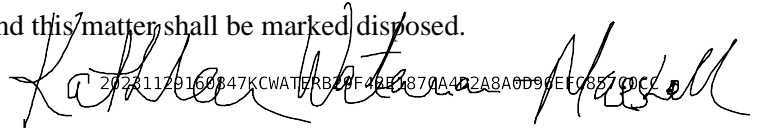
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10,
11, 12, 13, 14, 15, 16, 17, 18, 20, 21

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)

This Article 78 matter was recently transferred to Part 9. Petitioners allege that respondents employed, and continue to employ, Sanitation Workers in out-of-title positions as Sanitation Police – performing essentially the same duties as Sanitation Enforcement Agents, a titled position. Petitioners allege this out-of-title employment violates Civil Service Law § 60. Notwithstanding the significant issue raised by this petition, petitioner’s failure to oppose respondents’ cross-motion to dismiss, in accordance with the parties’ stipulation, constitutes a default and is fatal to the petition. As relevant here, by stipulation dated July 14, 2023, petitioner agreed to file opposition to respondents’ cross-motion to dismiss no later than August 18, 2023, and respondents agreed to file reply papers no later than September 4, 2023. However, no further papers were filed. Consequently, the cross-motion to dismiss is unopposed, petitioners have defaulted in opposing the motion to dismiss, and dismissal is required (*see e.g. Gellert v. Shannon*, 215 AD3d 805 [2d Dept 2023]; *Helm v. PHH Mortgage Corp.*, 193 AD3d 420 [1st Dept 2021]). Accordingly, it is hereby

ORDERED that the unopposed cross-motion to dismiss is granted on default; and it is further**ORDERED** that the petition is dismissed and this matter shall be marked disposed.

11/29/2023

DATE

KATHLEEN WATERMAN-MARSHALL,
J.S.C.

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: